



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC107]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to U.S. Navy Construction at Naval Station Norfolk in Norfolk, Virginia

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for Letter of Authorization; request for comments and information.

SUMMARY: NMFS has received a request from the U.S. Navy for authorization to take small numbers of marine mammals incidental to construction activities associated with the replacement of Pier 3 at Naval Station Norfolk over the course of 5 years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the Navy's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on the Navy's application and request.

DATES: Comments and information must be received no later than *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to ITP.Corcoran@noaa.gov.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at

<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities> without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Kim Corcoran, Office of Protected Resources, NMFS, (301) 427-8401. An electronic copy of the Navy's application may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On April 8, 2022, NMFS received an application from the Navy requesting authorization for take of marine mammals incidental to construction activities related to demolition and construction activities associated with the replacement of Pier 3 at Naval Station Norfolk. Following NMFS’ review of the application, the Navy provided responses to our questions on June 3, 2022 and August 29, 2022. A revised version of the application was submitted on September 22, 2022 and the application was deemed adequate and complete on September 26, 2022. The requested regulations would be valid for 5 years, from April 1, 2023 through March 31, 2028. The Navy plans to conduct

necessary work, including vibratory pile driving and removal, impact pile driving, and drilling, to demolish the existing Pier 3 and Pier 3T, replace a portion of the fender system at Pier 4, and construct the new Pier 3, two new wharfs/relieving platforms and a new portion of a bulkhead fender system. The proposed action may incidentally expose marine mammals occurring in the vicinity to elevated levels of underwater sound, potentially resulting in incidental take, by Level A and Level B harassment. Therefore, the Navy requests authorization to incidentally take marine mammals.

Specified Activities

The Navy is proposing to construct a new Pier 3 immediately north of the existing Pier 3 and align it with new bulkhead of CEP-176 wharf, providing a continuous berthing structure along the north side of a new submarine pier/wharf structure. The entire project scope includes construction of the new Pier 3, construction of a new wharf at CEP-176, construction of new wharf/relieving platform at CEP-102, demolition of Pier 3T, replacement of a portion of fender system at Pier 4, and construction of a new portion of fender system at CEP-175 bulkhead. The Navy expects construction will require approximately 513 in-water workdays over the 5 year period. Five species of marine mammals are known to occur in the area and have the potential to be taken by the Navy's activities.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the Navy's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by the Navy, if appropriate.

Dated: October 4, 2022.

Catherine G. Marzin,

Deputy Director, Office of Protected Resources,

National Marine Fisheries Service.

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